Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

In The
Supreme Court of the United States

OCTOBER TERM, 1999

WILLIAM H. HASTINGS,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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3048

QUESTIONS PRESENTED FOR REVIEW

1. Whether 18 U.S.C. §3742 presents an independent ground for jurisdiction of the Court of Appeals when Petitioner is appealing from an otherwise final judgment of the District Court.

2. Whether the entry of a judgment of restitution by the District Court in the absence of any evidence that Petitioner's criminal conduct directly harmed the victims of the scheme, conspiracy and course of conduct of which Co-Defendants were convicted was improper and constituted clear error under *Hughey v. U.S., 495 U.S. 411, 110 S. Ct. 1979, 1981, 109 L. Ed.2d 408 (1990).*

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STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals of which review is sought was entered on April 1, 1999. Petitioner filed a timely motion for rehearing in the Court of Appeals which was denied by the Court of Appeals by Order filed May 17, 1999. An amended Order denying the Petition for Rehearing was filed May 21, 1999.

This Court has jurisdiction to review under 28 U.S.C. §1254.

The statutes relied upon in this appeal are set out verbatim as follows:

> 18 U.S.C. §3742(a)(1) A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence was imposed in violation of law.
>
> 18 U.S.C. §3663(a)(2) For the purposes of restitution, a victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity means any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. (As effective on date of Judgment.)

STATEMENT OF THE CASE

Petitioner appealed to the Court of Appeals from a final conviction and sentencing order of the District Court entered January 26, 1990. The Court of Appeals had subject matter jurisdiction under 18 U.S.C. §3742 and 28 U.S.C. §1291. Petitioner was entitled to bring the appeal even though the judgment would otherwise be final, under the express terms of 18 U.S.C. §3742(a)(1).

Petitioner was charged, along with six others, with wire fraud under Title 18 U.S.C. §1343 and 2. The specific conduct charged was that Petitioner placed a telephone call in interstate commerce in furtherance of the conspiracy engaged in by Co-Defendants. There was, however, no allegation or evidence that Petitioner's conduct directly caused any losses or harm to any of the victims of the scheme. The Judgment of Restitution, in the amount of $100,000.00, was entered after a plea of guilty. Petitioner was also sentenced to four years imprisonment in addition to the Judgment of Restitution.

On April 8, 1998, Petitioner filed a Petition for Writ of Coram Nobis to seek relief from the District Court, but the Petition was denied. Notice of appeal was filed August 17, 1998.

ARGUMENT

By dismissing Petitioner's appeal as untimely, the Court of Appeals effectively held that 18 U.S.C. §3742 does not present an independent ground for jurisdiction in the Court of Appeals for an appeal from an otherwise final judgment, despite the express language in §3742 that the Court of Appeals has jurisdiction to hear an appeal of "an otherwise final judgment". The effect of the Court's ruling is that an appellant's right to appeal is dependent upon the time tables imposed by Appellate Rule 4, which requires the filing of a notice of appeal within ten days after the entry of Judgment.

18 U.S.C. §3742 applies to a case where the judgment was entered in violation of law and amounted to clear error, the standard announced in *U.S. v. Morgan, 346 U.S. 502, 511, 74 S. Ct. 247, 252, 98 L. Ed. 248 (1954).*

The Judgment of Restitution was entered in violation of law under *Hughey v. U.S.*, 495 U.S. 411, 110 S. Ct. 1979, 1981, 109 L. Ed.2d 408 (1990), because there was no evidence nor was there even an allegation that Petitioner's conduct directly harmed any victim of the conspiracy that was the basis of the case against all of the Defendants involved.

This is an important question of federal law that has not

been, but should be, settled by this Court in that there is no case interpreting the meaning of the language "an otherwise final judgment" in 18 U.S. §3742. If the timetables provided by Appellate Rule 4 are applicable, then the language in §3742 to the effect that the defendant has the right to file a notice of appeal from "an otherwise final judgment" has no meaning.

CONCLUSION

Petitioner respectfully requests the issuance of a writ of certiorari and that this Court consider arguments in this case to determine whether 28 U.S.C. §3742 means what it says and that a judgment that is entered in violation of law can be reviewed at any time by the Court of Appeals.

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By: _____
W. W. McNeal

Counsel for Petitioner

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United States District Court

Northern District of New York

U.S. District Court

Filed Jan. 29, 1990

CaseNumber: 89-CR-190

JUDGMENT IN A CRIMINAL CASE

UNITED STATES OF AMERICA

V.

William H. Hasting

923 S. Pecan

Luling, Texas 78648

(Name and Address of Defendant)

Richard Fahrenz, Esq.

Attorney for Defendant

THE DEFENDANT ENTERED A PLEA OF:

[☒ guilty ☐ nolo contendere]as to count(s) 37

☐ not guilty as to count(s) _____

THERE WAS A:

[☒ finding ☐ verdict]of guilty as to count(s) 37

THERE WAS A:

[☐ finding ☐ verdict]of not guilty as to count(s)_____

☐ judgment of acquittal as to count(s)_____

The defendant is acquitted and discharged as to this/these count(s).

THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF:

Wire Fraud in violation of 18 USC 1343 and 2.

IT IS THE JUDGMENT OF THIS COURT THAT:

the defendant is committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 4 years and the defendant is ordered to pay restitution in the amount of $100,000.00.

It is further order that the defendant pay a Special Assessment to the Clerk of the Court of $50.00 which shall be due immediately.

The defendant is to surrender to the Attorney General by reporting to the institution designated by 1:00 p.m. on February 27, 1990 and to contact the U.S. Marshal of this district who will advise the defendant of the institution designated.

In addition to any conditions of probation imposed above, IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

CONDITIONS OF PROBATION

Where probation has been ordered the defendant shall:

(1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
(2) associate only with law-abiding persons and maintain reasonable hours;
(3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);
(4) not leave the judicial district without permission of the probation officer;
(5) notify your probation officer immediately of any changes in your place of residence;
(6) follow the probation officer's instructions and report as directed.

The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occuring during the probation period.

IT IS FURTHER ORDERED-that the defendant shall pay a total special assessment of $ 50.00 pursuant to Title 18, U.S.C. Section 3013 for count(s) 37 as follows:

which shall be payable to the Clerk of the Court immediately.

IT IS FURTHER ORDERED THAT any remaining counts as to this deft are DISMISSED on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall pay to the United States attorney for this district any amount imposed as a fine, restitution. The defendant shall pay to the clerk of the court any amount imposed as a cost of prosecution. Until all fines, restitution, and costs are duly paid, the defendant shall immediately notify the United States attorney for this district of any change in name and address.

IT IS FURTHER ORDERED that the clerk of the court deliver a certified copy of this judgment to the United States marshal of this district.

☐ The Court orders commitment to the custody of the Attorney General and recommends:

January 26, 1990
Date of Imposition of Sentence

s/s Thomas J. McAvoy
Signature of Judicial Officer

Thomas J. McAvoy, U.S.D.J.
Name and title of Judicial Officer

1/30 90
Date

RETURN

I have executed this Judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____
Date

_____, the institution designated

by the Attorney General, with a certified copy of this

Judgment in a Criminal Case.

_____
United States Marshal

By _____
Deputy Marshal

UNITED STATES COURT 0F APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 1st day of April one thousand nine hundred and ninety-nine.

United States Court of Appeals
Filed April, 1, 1999
Carolyn Clark Campbell Clerk
Second Circuit

PRESENT:

Hon. John M. Walker, Jr.,
Hon. Jose A. Cabranes,

Circuit Judges,

Hon. Nicholas Tsoucalas,*

Judge.

UNITED STATES OF AMERICA,

Appellee,

v.

THOMAS H. HORNICK,

Defendant,

WILLIAM H. HASTINGS

Defendant-Appellant,

---

*The honorable Nicholas Tsoucalas of the United States Court of International Trade, sitting by designation.

APPEARING FOR APPELLANT:

W. W. McNEAL, Esq.
McNeal, Garner & Lippe, PLLC
Lockhart, Texas

APPEARING FOR APPELLEES:

WILLIAM H. PEASE
Assistant United States Attorney
for the Northern District of
New York, Syracuse, New York

Appeal from the United States District Court for the Northern District of New York (McAvoy, Chief Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be and it hereby is **AFFIRMED.**

William H. Hastings appeals from the April 8, 1998 order of the district court dismissing his petition for a writ of error coram nobis. Hastings argues that his 1990 sentence included a restitution order that was imposed in violation of law. "However, a petitioner for a writ of error coram nobis must demonstrate sound and justifiable reasons for failing to seek appropriate earlier relief." See Foont v. United States, 93 F.3d 76, 79-80 (2d Cir. 1996). Hastings can demonstrate no sound reasons for his eight year delay, and the district court acted well within its discretion in dismissing the petition.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

UNITED STATES COURT OF APPEALS
FILED
MAY 17, 1999
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 17th day of May, one thousand nine hundred and ninety-nine.

Present:

Hon. John M. Walker

Hon. Jose A. Cabranes

Hon. Nicholas Tsoucalas

CIRCUIT JUDGES

USA

Docket No. 98-1493

v.

Hornick

A petition for panel rehearing having been filed herein by WILLIAM HASTINGS,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is **DENIED**.

FOR THE COURT
CAROLYN CLARK CAMPBELL
Clerk
By:
s/s Beth J. Meador,
Beth J. Meador,
Administrative attorney

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FILED MAY 21, 1999
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 21st day of May, one thousand nine hundred and ninety-nine.

BEFORE: Hon. John M. Walker, Jr.,
Hon. Jose´ A. Cabranes,
Circuit Judges.
Hon. Nicholas Tsoucalas,*
United States Court of
International Trade Judge

AMENDED ORDER

Docket No. 98-1493

UNITED STATES OF AMERICA

V.

HORNICK

A petition for panel rehearing having been filed herein by WILLIAM HASTINGS,

Upon consideration thereof. IT IS ORDERED that said petition be, and it hereby is, denied.

FOR THE COURT:
KAREN GREVE MILTON
Acting Clerk
by:
S/S Beth J.Meador
Beth J. Meador,
Administrating Attorney

*The Hon. Nicholas Tsoucalas. judge of the United States Court of International Trade, sitting by designation.